IN THE

Supreme Court of the United States

October Term, 1959

No. 669

WILLIAM A. ALBAUGH, *Petitioner*,

v.

DISTRICT OF COLUMBIA GOVERNMENT, et al., *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT OF QUESTION PRESENTED

Was petitioner, while a probationary employee of the District of Columbia Government, deprived of any constitutional or other legal right when, for stated reasons and after procedures admittedly in accordance with law, he

was, during the probationary period, separated from his employment?

STATEMENT OF THE CASE

By "Complaint for Conflict of Interest" filed in the United States District Court for the District of Columbia on January 20, 1958 and thereafter amended, petitioner sought to enjoin respondents from conducting, participating in or supporting the solicitation of funds for the United Givers Fund. Petitioner sought also damages in excess of one million dollars for libel in connection with the service of notice of the termination of his employment with the District of Columbia Government (R. 4-7, 8-9, 10).

At the trial on March 10 and 11, 1959 it was undisputed that petitioner, while a probationary employee of the District of Columbia Government, was on January 7, 1958 served with notice of the termination on January 24, 1958 of his employment for the reasons:

> "(1) Failure to demonstrate adequate ability to perform assigned duties in the preparation of collision and condition diagrams.
>
> "(2) Being a source of disturbance to co-workers by continually leaving assigned work area to converse with them on subjects unrelated to assigned duties." (R. 20)

On April 3, 1959, the trial court made detailed findings of fact and conclusions of law to the effect, *inter alia*, that respondents were not prohibited by statutory or constitutional law from supporting or participating in the fund raising campaigns challenged in the complaint; that respondents did not, by any such support or participation in fund-raising campaigns, violate any of petitioner's constitutional rights; that respondents did not violate any of petitioner's statutory or constitutional rights when, during

the probationary period, they separated him from his employment; and that the recommendation which was the basis for the personnel action was a privileged communication within the scope of official duties and, in any event, did not constitute libel (R. 22-24).

Judgment was accordingly entered for the respondents. Petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit which affirmed the judgment of the District Court (Petitioner's Appendix 3a). There followed the petition to this Court for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit.

ARGUMENT

Because no substantial local or national question is presented, the petition for writ of certiorari should be denied.

Involved in the proceedings below was administrative action by respondents which resulted in the separation of petitioner from probationary employment in the service of the District of Columbia Government (R. 20). It is crystal clear from the record that no substantial local or national question is presented, rather that this case involves no more than a question arising out of routine personnel action. Petitioner contends nevertheless that certain of his constitutional or statutory rights were violated by such administrative action. Specifically, petitioner says at page 4 of his brief that the "* * * official causes given for his dismissal were not true and constituted 'malicious libel per se' and that the obvious reason for his dismissal was his open opposition to the 'One Fund Drive,'" which he insists was conducted or supported by respondents without constitutional or statutory authorization.

In this connection, however, petitioner conceded that, as a probationary employee of the District of Columbia Government, he was "subject to instant dismissal without Civil Service appeal rights" (R. 21). Moreover, the trial court concluded from its detailed findings (R. 22-24) that re-

spondents did not, by the administrative action complained of, violate any of petitioner's employment rights and that petitioner was deprived of no constitutional or statutory right by either his dismissal as a probationary employee of the District of Columbia Government or by respondents' support of, or participation in, the challenged fund-raising campaigns (R. 24). The United States Court of Appeals for the District of Columbia Circuit found no reversible error and affirmed the judgment of the trial court (Petitioner's Appendix 2a - 3a).

From the foregoing, the conclusion seems compelled that the questions resolved by the court below were of purely local significance in the discharge of administrative duties in a routine personnel matter. What petitioner has attempted unsuccessfully to do is to convert this case into one involving a non-existant constitutional issue. As this Court said in *United Surety Company* v. *American Fruit Product Co.*, 238 U. S. 140, 59 L. Ed. 1238, 35 S. Ct. 838, at page 142:

> "The constitutional point is a mere pretext put forward in order to open other questions that otherwise could not come here."

This Court has consistently refused to review decisions of the courts of the District of Columbia, absent a showing of egregious error in resolving a serious question of general public importance. See *American Security and Trust Co.* v. *District of Columbia*, 224 U. S. 491, 56 L. Ed. 856, 32 S. Ct. 553. See also and compare: *Del Vecchio* v. *Bowers*, 296 U. S. 280, 80 L. Ed. 229, 56 S. Ct. 190; and *Ford* v. *District of Columbia*, D. C. Mun. App., 102 A. 2d 838, aff. 95 U. S. App. D. C. 87, 219 F.2d 769, cert. den. 349 U. S. 964, 99 L. Ed. 1286, 75 S. Ct. 897.

CONCLUSION

Petitioner has presented nothing of substance to establish that this case is within the class of cases contemplated

by Rule 19 (b) of the Rules of this Court so as to warrant the exercise of this Court's jurisdiction to review on writ of certiorari. Respondents, therefore, respectfully submit that the petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

Respectfully submitted,

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